

Decision

Filed: August 19, 2013

State of Louisiana
Civil Service Commission

Docket Nos. 17687 and 17689 (consolidated)

Deborah King and Laurantette Clark

Versus

Interim Louisiana State University Public Hospital

Rule(s): 12.2
Topic(s): Reduction in pay; creating a hostile disturbance

Appearances: Deborah King, in proper person
Laurantette Clark, in proper person
Philip H. Kennedy, counsel for ILSUPH

Statement of the Appeal

The Interim Louisiana State University Public Hospital (ILSUPH) employed Deborah King as a Registered Nurse 2 (RN2) and Laurantette Clark as a Licensed Practical Nurse 3 (LPN3) and they served with permanent status.¹

By letter dated February 20, 2013, and given to Ms. King on March 7, 2013, ILSUPH disciplinarily reduced her pay by an amount equivalent to a five-day suspension effective March 18, 2013. ILSUPH alleges that on November 23, 2012, Ms. King created a hostile disturbance at the hospital with her subordinate, Ms. Clark.

On March 26, 2013, Ms. King appealed her reduction in pay under docket number 17687. In her appeal, she denies the allegations of the disciplinary letter. As relief, Ms. King requests rescission of the disciplinary action.

By letter dated February 27, 2013, and given to Ms. Clark on March 7, 2013, ILSUPH disciplinarily reduced her pay by an amount equivalent to a five-day suspension effective March 18, 2013. ILSUPH alleges that on November 23, 2012, Ms. Clark created a hostile disturbance at the hospital with her supervisor, Ms. King.

¹ Ms. King and Ms. Clark were laid off from their positions by ILSUPH effective June 29, 2013.

On March 28, 2013, Ms. Clark appealed her reduction in pay under docket number 17689. In her appeal, she denies the allegations of the disciplinary letter. As relief, Ms. Clark requests rescission of the disciplinary action.

On April 9, 2013, I consolidated these two appeals for hearing pursuant to Civil Service Rule 13.23. I held a public hearing on the consolidated appeals on June 20, 2013, in New Orleans, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. ILSUPH employed Deborah King as a Registered Nurse 2 (RN2) and Laurantette Clark as a Licensed Practical Nurse 3 (LPN3) and they served with permanent status. Ms. King had been an ILSUPH employee since July 2008, and Ms. Clark had been an ILSUPH employee since October 2011.

2. On November 23, 2012, Ms. King and Ms. Clark were working at ILSUPH's Urgent Care Clinic. Ms. King was the charge nurse, and thus she was functioning as Ms. Clark's supervisor.

3. At 7:00 a.m., Ms. King watched Ms. Clark check a patient's blood sugar level with a glucometer, which is supposed to be calibrated before each use. Ms. King checked the glucometer and noticed that Ms. Clark had failed to calibrate it that day and on the previous day. This irritated Ms. King, and she said, "Thanks very much!" to Ms. Clark in a sarcastic tone of voice. Ms. Clark was sitting nearby talking with a patient.

4. Still irritated with Ms. Clark, Ms. King slammed a cabinet door that was located above Ms. Clark's head twice. A few minutes later, Ms. Clark told Ms. King, "The next time you slam something at my head, I am going to slam your head!" Shortly thereafter, Ms. Clark told Ms. King, "You just looking for somebody to fuss at and it ain't going to be me. You need to call your house and fuss at someone there." Ms. King responded, "Kiss my ass! You know, my big brown starfish!"

5. Ms. Clark moved rapidly towards Ms. King, who was sitting behind a desk. While standing in front of Ms. King in a threatening posture, Ms. Clark asked Ms. King, "Do you want me to kick your ass?" Ms. Clark pointed an ink pen very near Ms. King's eyes while repeatedly telling her, "Come on outside and we will take care of this right now." Ms. King told Ms. Clark, "Move!" Ms. Clark responded, "You need to move me!"

6. After Alicia McKendall, Administrative Coordinator 3, saw Ms. Clark approach Ms. King, Ms. McKendall quickly walked to Ms. Clark, grabbed her arm, and attempted to pull Ms. Clark away from Ms. King. Ms. Clark initially resisted Ms. McKendall, but after a short period of time she allowed Ms. McKendall to pull her away from Ms. King.

7. A few minutes after Ms. McKendall had succeeded in separating Ms. King and Ms. Clark, Ms. Clark called Ms. King a “bitch.” Ms. King sarcastically responded, “Thank you.” The entire incident between Ms. Clark and Ms. King took place within the view and/or hearing of ILSUPH patients and staff.

8. ILSUPH Policy 8015 states in pertinent part as follows:

V. CONDUCT SUBJECT TO DISCIPLINARY ACTION

The following acts are offenses and are considered conduct warranting disciplinary action. Any employee who commits any act detailed within this section, as well as any other act not listed or defined herein that impairs the efficient or orderly operation of the state service, may be disciplined as provided for within this policy or the appropriate organizational-wide, divisional and/or departmental policy.

This list is not all inclusive.

...

13. Fighting or Creating a Disturbance on MCL Premises

The following shall serve as a guide in determining the appropriate administrative action to be taken against employees, physicians, volunteers and contract workers in cases of violent and/or other inappropriate behavior:

- ❖ *Any employee who **initiates** an incident of verbal assault and/or intimidation shall be subject to disciplinary action up to and including termination.*
- ❖ *Any employee who **initiates** a violent incident involving physical assault shall have their employment terminated.*
- ❖ *Any employee who **encounters** an incident of physical assault and does not walk away but engages in a continuation of the act shall have their employment terminated. Latitude may be extended to an individual acting in self defense.*

...

- ❖ *The use of profanity does not stimulate a nurturing, healing environment for our patients, visitors, contract workers and staff.*

...

- ❖ *Employees who engage in the use of profanity in the presence of our patients, visitors, and/or staff shall be*

subject to progressive disciplinary action up to and including termination.

Discussion and Conclusions of Law

An employee with permanent status in the classified civil service may be disciplined only for cause expressed in writing. Cause for disciplinary action is conduct of the employee that is prejudicial to the public service or detrimental to its efficient operation. *Bannister v. Dept. of Streets*, 666 So.2d 641 (La. 1996). The right of a classified state employee with permanent status to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. That section states that “[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority.” The appointing authority is required to prove its case by a preponderance of the evidence, which is evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not. *Wopara v. State Employees’ Group Benefits Program*, 2002-2641 (La. App. 1 Cir. 7/2/03); 859 So.2d 67.

ILSUPH charges Ms. King and Ms. Clark with creating a hostile disturbance on its premises on November 23, 2012.

Docket number 17687: Ms. King’s reduction in pay

On November 23, 2012, Ms. King became irritated with Ms. Clark for her failure to calibrate the glucometer. She expressed her irritation by speaking to Ms. Clark in a sarcastic tone of voice and by slamming a cabinet door near Ms. Clark’s head twice. She subsequently told Ms. Clark to kiss her “ass.”

This behavior by Ms. King was unprofessional, inappropriate, and threatening. Despite being a supervisor, she, along with Ms. Clark, created a hostile disturbance in front of patients and hospital staff; in fact, I conclude that Ms. King initiated the confrontation and then failed to de-escalate the situation. Her actions were in violation of hospital policy and clearly detrimental to the state service. ILSUPH has proved cause for discipline against Ms. King.

Docket number 17689: Ms. Clark’s reduction in pay

After Ms. King slammed the cabinet door, Ms. Clark threatened to “slam” Ms. King’s head. She responded to Ms. King’s “Kiss my ass!” comment by moving aggressively towards Ms. King, assuming a threatening posture, and stating to Ms. King, “Do you want me to kick your ass?” and “Come on outside and we will take care of this right now.” Ms. Clark also made threatening gestures at Ms. King’s eyes with an ink pen. Ms. McKendall had to physically separate Ms. Clark from Ms. King to end the confrontation, which Ms. Clark sought later to reignite by telling Ms. King she was a “bitch.”

Like Ms. King, this behavior by Ms. Clark was unprofessional, inappropriate, and threatening. Despite her assertions to the contrary at the hearing, Ms. Clark, together with Ms. King, created a hostile disturbance in front of patients and hospital staff. Her actions were in violation of hospital policy and clearly detrimental to the state service. ISUPH has proved cause for discipline against Ms. Clark.

Conclusion

The Supreme Court of Louisiana has held that it is the duty of the Commission and its Referees to independently decide from the facts presented whether the appointing authority has legal cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *AFSCME, Council #17 v. State ex rel. Dept. of Health and Hospitals*, 789 So.2d 1263 (La., 2001).

Both Ms. King and Ms. Clark contend that their own penalty is too severe. Ms. King complains that she received the same penalty as Ms. Clark, whom she contends exhibited the more egregious behavior. The basis of Ms. Clark's complaint regarding her penalty is that Ms. King initiated the encounter, not her. However, their contentions that their respective penalties are too severe are without merit. Ms. King was a supervisor who should have known better than to initiate and continue such a confrontation, and Ms. Clark did everything she could to prolong and escalate the conflict, so they are equally at fault for this incident. Based on the foregoing, I conclude that ILSUPH proved cause for discipline against Ms. King and Ms. Clark, and that the penalty imposed upon each of them, a reduction in pay equivalent to a five-day suspension, is commensurate with their offenses.

Accordingly, I hereby deny these appeals.

Brent C. Frederick
Civil Service Commission Referee